In the High Court of Punjab and Haryana, Chandigarh.

Civil Revision No. 5419 of 2007

Date of Decision: 4.12.2007

Smt. Kulwant Kaur

…Petitioner

Versus

Smt. Shashi Kanta Airi and Others

…Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Subhash Ahuja, Advocate
for the petitioner.

Mr. Deepak Arora, Advocate
for the respondents.

RAJESH BINDAL, J.

1. The petitioner/tenant is in revision before this Court against the order of eviction dated September 18, 2007 passed by learned Rent Controller, Chandigarh, in a petition filed by the landlord under Section 13A of the East Punjab Urban Rent Restriction Act, 1949 (as extended to U.T. Chandigarh) [for short "the Act '].

2. As noticed in the order passed by learned Rent Controller, the landlord Raghbir Kumar filed the petition for eviction of the petitioner/tenant from the house in dispute which was let out to her at a monthly rent of Rs. 2,500/-, for a limited period of one year from June 2003 to June 2004. The petitioner paid rent only for three months and thereafter she did not pay rent also. The landlord was employed with Punjab State Electricity Board but was working on deputation with the Chandigarh Administration. It is further allege that on account of his being a Government servant, he had been allotted House No. 1063, Sector 28-B in Chandigarh, however, after his deputation period with the Chandigarh Administration was over, the allotment stood cancelled and the house in dispute was required for his personal use. In any

case, the submission was that after his retirement on January 31, 2007, the landlord would not be able to retain the Government premises and would have to vacate the same. It is further submitted that the landlord was patient of Cancer in the Gall Bladder and was under treatment at P.G.I. Chandigarh and besides his wife, he had two young children to support, for whom the premises was required.

3. After the notice was issued in the petitioner, in terms of special procedure prescribed under Section 18A of the Act for disposal of applications under Section 13A of the Act, the tenant could file an application for leave to defend. In the absence thereof, the allegations made by the landlord were deemed to be admitted by the tenant and the landlord was entitled to an order of eviction.

4. In the present case, it remains undisputed that the application for leave to defend filed by the tenant/petitioner was dismissed by learned Rent Controller and thereafter no further proceedings were taken by her. It has further come on record that during the pendency of petition, the landlord Raghbir Kumar died on June 10, 2007, and thereafter his legal heirs namely his widow and children were brought on record and the proceedings continued. Finally, learned Rent Controller while accepting the petition vide order dated September 18, 2007 directed the petitioner/tenant to vacate the demised premises within a period of one month.

5. I have heard learned counsel for the parties and with their able assistance have perused the paper book.

6. The contention raised by learned counsel for the petitioner/tenant is that Section 2(hh) of the Act, defines 'specified landlord' and in case the landlord dies during the pendency of petition under Section 13A of the Act, the same cannot be proceeded with for the reason that the landlord maintaining the petition under Section 13A of the Act was no more there and the benefits as incorporated in proviso to Section 13A of the Act would not be available to the legal heirs of such a landlord. Reliance has been placed on ***Niranjan Dass v. Trilok Chand 1996 (2) Rent Law Reporter 634 (SC)***.

7. On the other hand learned counsel for the respondents submitted that once the prayer for leave to defend by the petitioner had been dismissed by learned Rent Controller, no issue can be raised by the petitioner/tenant at this stage in the present petition. It is further submitted that the order refusing leave to defend was not impugned by the petitioner/tenant in any further proceedings. Still further, the submission is that even the application for

bringing the legal heirs of deceased Raghbir Kumar was not contested by the petitioner and in such situation no such plea can be raised by the petitioner at this stage and the impugned order passed by learned Rent Controller deserves to be upheld. The respondents are in dire need of the premises in dispute as they are being made to pay penal rent for the Government accommodation in their possession. Reliance is place on ***Dr. Dina Nath v. Smt. Santokh Kaur etc. (1987-1) 91 Punjab Law Reporter 171 (P&H), Ram Singh v. Parkash Ram represented through L.Rs 1989(1) Rent Law Reporter 506 (P&H), Panna Lal v. Smt. Kamla Devi 1990(1) Rent Law Reporter 84 (P&H)*** and ***V.K.Chopra v. Subhash Chander 2006(1) Rent Law Reporter 507 (P&H).***

8. I have heard learned counsel for the parties. It would be appropriate to extract the provisions of law as referred to by learned counsel for the petitioner, accordingly Section 2(hh) and Section 13A of the Act, are extracted here-in-below:-

> **"2(hh)** "specified landlord" means a person who is entitled to receive rent in respect of a building on his own account and who is holding or has held an appointment in a public service or post in connection with the affairs of the Union or of a State."
>
> **"13-A. Right to recover immediate possession of residential or scheduled building to accrue to certain persons**
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> Where a specified landlord at any time within one year prior to or within one year after the date of his retirement or after his retirement but within one year of the date of commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985, whichever is later, applies to the Controller along with a certificate from the authority competent to remove him from service indicating the date of his retirement and his affidavit to the effect that he does not own and possess any other suitable accommodation in the local area in which he intends to reside to recover possession of his residential building or scheduled building, as the case may be, for

his own occupation, there shall accrue , on and from the date of such application to such specified landlord, notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract (whether expressed or implied) custom or usage to the contrary, a right to recover immediately the possession of such residential building or scheduled building or any part or parts of such building if it is let out in part or parts:

Provided that in case of death of the specified landlord, the widow or widower of such specified landlord and in the case of death of such widow or widower, a child or a grand-child or a widowed daughter-in-law who was dependent upon such specified landlord at the time of his death shall be entitled to make an application under this Section to the Controller:-

(a) in the case of death of such specified landlord, before the commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985, within one year of such commencement;

(b) in the case of death of such specified landlord, after such commencement, but before the date of his retirement, within one year of the date of his death;

(c) in the case of death of such specified landlord, after such commencement and the date of his retirement, with one year of the date of such retirement;

and on the date of such application the right to recover the possession of the residential building or scheduled building, as the case may be, which belonged to such specified landlord at the time of his death shall accrue to the applicant;

Provided further that nothing in this section shall be so construed as conferring a right, on any person to recover possession of more than one

> residential or scheduled building inclusive of any part or parts thereof if it is let out in part or parts:
>
> Provided further that the Controller may give the tenant a reasonable period for putting the specified landlord or, as the case may be, the widow, widower, child, grand-child or widowed daughter-in-law in possession of the residential building or scheduled building, as the case may be, and may extend such time so as not to exceed three months in the aggregate.

9. Section 2(hh) of the Act defines a person who is entitled to receive rent in respect of a building on his own account and who is holding or has held an appointment in a public service or post in connection with the affairs of the Union or of a State. In the present case, the petitioner/tenant is not disputing that the landlord Raghbir Kumar was a specified landlord as he was holding the appointment in a public service.

10. Section 13A of the Act provides for certain specified procedure entitling the specified landlord at any time within one year prior to or within one year after the date of his retirement or after his retirement but within one year of the date of commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985, whichever is later, to apply to the Rent Controller for seeking immediate possession of the residential or scheduled building in possession of a tenant for his own use and occupation. Proviso to Section 13A of the Act provides that in case of death of specified landlord, the widow or widower of such specified landlord and in the case of death of such widow or widower, a child or grand child or a widowed daughter-in-law who was dependent upon such specified landlord at the time of his death shall be entitled to make an application under this Section to the Rent Controller for recovering the possession of the building .

11. The issue as to whether the widow of the deceased specified landlord can continue with the eviction petition after his death has been considered by this Court in various judgments. In ***Ram Singh's case*** *(supra),* this Court opined as under:-

> "7. Apart from the above, during the pendency of this revision petition, the landlord died and his sons and daughter and his widow, were brought on the record and they moved the application, noticed in the earlier part of

this judgment, for amendment of the ejectment application as to convert the same to the one under Section 13-A of the aforementioned Act. Though, in the facts and circumstances of this case, the applicants are entitled to seek the necessary amendment, yet as the eviction order is being maintained on the other ground, the necessity of the amendment does not arise. However, the Rent Controller had found that the requirement of the landlord was not bona fide because according to him, it could not be accepted that the landlord would shift from Phillaur where he had established his business in the name of his wife, to Machhiwara, where he did not hold any means of livelihood. Since the landlord had died during the pendency of the petition, his legal representatives are entitled to maintain the petition under Section 13-A of the aforesaid Act, being specified landlords and their need is bonafide to evict the tenant".

In ***Panna Lal's case*** *(supra)*, this Court opined as under:-

"The proviso gives the right to the widow of a specified landlord to be brought on the record of the case provided she was dependent upon such specified landlord at the time of his death. It is not conceivable that a specified landlord has a right to recover possession but his widow as legal heir would not have the right to recover possession All the legal representatives, in general law, are entitled to fight on the same cause of action having the same rights which vested in a person who has come to the Court of law. If the landlord had the right, his widow would certainly have the right to recover possession. If the interpretation as has been put by the petitioner's counsel is accepted, the provisio to Section 13-A , of the Act would become redundant. Moreover, no such rider has been put to the proviso that if the landlord dies after the filing of the application within the prescribed time, his

> widow was debarred from continuing with the application. If the legislature was wanting to debar the widow of a landlord, there was nothing in the way of the legislature to create such a bar in the statute itself. The very fact that a right has been given to the widow of the specified landlord to be brought on the record of the case means that the legislature wanted that the right to recover possession vested in a specified landlord can be exercised by his widow. To put any other interpretation to the statute, the same would be doing violence to the wording and the spirit of the proviso. Moreover, the proviso has to be interpreted liberally giving the rights to the heirs of a person who has unfortunately died but who has filed the application claiming benefit of Section 13-A of the Act within time".

12. On the other hand judgment referred to and relied upon by learned counsel for the petitioner/tenant in ***Niranjan Dass's case*** *(supra)* is not applicable in the facts and circumstances of the case simply for the reason that the property after the death of the predecessor-in-title has devolved on five co-owners and it could not be proved as to who was the landlord legally entitled to receive rent on his own account. Accordingly, the judgment is distinguishable on facts and will not apply in the present case.

13. The issue sought to be raised by the petitioner/tenant has already been considered in the above referred judgment by this Court and is in fact clear from plain language of the provisions of the Act. The contention of learned counsel for the petitioner is that the widow or children of the deceased landlord cannot be said to be specified landlord is too far fetched and in case the contention raised by him is accepted, the same will totally negate the object for which the provisions were added. The answer to the issue raised by learned counsel for the petitioner/tenant lies in Section 13A of the Act itself when the legislature in its wisdom has even conferred this right to the widow or even the children, grand children etc. to move an application for eviction under Section 13A of the Act after the death of specified landlord. There is no bar if these very persons are allowed to continue with the petition filed by the specified landlord himself in case he dies during the pendency of the petition. The contention raised is totally misconceived and accordingly rejected.

14. No contention was raised on the issue of genuine personal necessity of the landlord in the present case. Even otherwise in terms of Section 18A(3) of the Act, in case leave to defend is not granted, the facts stated by the landlord in the eviction petition are deemed to be admitted by the tenant. In ***V.K.Chopra's case*** *(supra)*, the need of the specified landlord who retired from the service and was occupying a Government accommodation where he was to pay penal rent was held to be bonafide and the eviction order passed against the tenant was upheld by this Court.

15. In view of my above discussions, I do not find any merit in the present petition and the same is accordingly dismissed. The tenant is directed to handover the vacant physical possession of the premises in dispute to the respondents on or before December 31, 2007.

(Rajesh Bindal)
Judge

December 4, 2007
"DK"

(Refer to reporter)